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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 655

JACK C. VAUGHAN,

Petitioner,

versus

GRADY MILLER, CLERK, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

JACK C. VAUGHAN, Petitioner,
In Propria Persona,

Mailing Address:
Post Office Box 1005,
Gardena, California.

HAUSER PRINTING CO., INC., NEW ORLEANS

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GRADY MILLER, CLERK, UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

To The Honorable, The Chief Justice And The Associate Justices Of The Supreme Court Of The United States:

Petitioner, Jack C. Vaughan, movant in the District Court, and petitioner in the United States Court of Appeals for the Eighth Circuit below, respectfully shows:

I.

OPINIONS OF THE COURTS BELOW

A. No opinion was rendered by the United States District Court for the Eastern District of Arkansas, the Court of first instance. The Respondent, District Court Clerk, by refusing to file petitioner's Motion for relief

from judgment, which was presented by petitioner for filing under *Rule 60(b)(1)(6) of the Federal Rules of Civil Procedure*, did not permit the District Court to consider the matter.

B. The Opinion of the United States Court of Appeals for the Eighth Circuit, denying petitioner's **Motion To File Petition For Writ of Mandamus Directed to Respondent** to compel respondent to receive and file petitioner's **Motion For Relief From Order and For Leave To File Amended Complaint** is reported at **216 F. 2nd 958.** (See also Tr. V)

II.

GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOLVED

It is believed that this case presents questions of major concern to the integrity of the federal judicial process and of such importance that it is unquestionably in the public interest to have them decided by this Court of last resort.

Petitioner complains of an invasion of his substantive rights under the Federal Constitution in that:

> The Opinion of an United States Court of Appeals, based upon an allegedly erroneous complaint, has denied full faith and credit to a prior valid State Court judgment; and
>
> By refusing to compel the Clerk of a United States District Court to receive and file a Motion for relief from judgment made under the provisions of Rule 60(b) of the *Federal Rules of Civil Procedure;* the Court of Appeals has wrongfully condoned and permitted said Clerk to ignore and violate with impunity a Federal Statute. Petitioner respectfully submits that here is nothing

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less than an illegal assault by a member of the Judicial Branch of the Federal Government upon the Constitutional powers of Congress.

As shown by the Record in this case, it is believed that the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, and also has so far sanctioned such a departure by the Clerk of the District Court, that the integrity of the federal judicial process requires the exercise of this Court's power of supervision to prevent an unwarranted and bald disregard of Federal Statute by the Clerk of an United States District Court.

A. **Judgments Which Petitioner Seeks To Have Reviewed.**

1. The ORDER of the United States Court of Appeals for the Eighth Circuit, dated and entered on November 13, 1954 (R. V), denying petitioner leave to file **Petition For Writ of Mandamus** to direct respondent, Grady Miller, Clerk of the United States District Court For The Eastern District Of Arkansas, to receive and file petitioner's **"Motion For Relief From Order, And For Leave To File Amended Complaint"** in Equity 2495, *Vaughan v. Warfield, et al.*

2. Petitioner also seeks review of the cause, *Vaughan v. Warfield, et al* (8th CCA), 207 F. 2nd 350; Certiorari denied 347 U.S. 916, 74 S. Ct. 514, 98 L. Ed. 392 in the light of a prior State Court decision rendered on August 22, 1951, by the Chancery Court of Chicot County, Arkansas, in the cause, *Vaughan v. Branson, et al,* No. 7894. A copy of the latter, bearing the attestation of the Clerk and Seal of Court annexed, together with a certificate of a judge of the Court that the attestation is in proper form, is filed with this petition.

B. The ORDER of said Court of Appeals denying petitioner's **petition for rehearing** in the present case (Par. A-1, above) was dated and entered on **December 20, 1954.** (Tr. VIII)

C. The Statutory provision believed to confer on this Court jurisdiction to review the judgments in question by writ of certiorari is Title 28, U.S.C.A., Section 1254(1).

III.

THE QUESTIONS PRESENTED FOR REVIEW

A. Whether this cause is properly before this Court by petition for Writ of Certiorari?

B. Whether the Clerk of an United States District Court may arbitrarily refuse to receive and file a Motion for relief from an order of dismissal for lack of jurisdiction, where such Motion is presented: (1) within time; (2) in accordance with *Rule 60(b)(1)(6) of the Federal Rules of Civil Procedure;* (3) before the filing of a responsive pleading by any of the defendants; and (4) for the purpose of amending and curing supposedly defective allegations of jurisdiction.

C. Whether this Court may correct errors manifest in a decision rendered by a Court of Appeals which conflicts with and denies petitioner equitable interests in lands, which equitable interests have been vested in petitioner by a previous valid State Court judgment.

IV.

THE CONSTITUTIONAL PROVISIONS AND STATUTES WHICH THE CASE INVOLVES

A. "On Motion and upon such terms as are just, the (District) Court may relieve a party * * * from a final judgment, order or proceeding for the following reasons: (1) Mistake, inadvertence, surprise, or excusable neglect; * * * (2) * * * (3) * * * (4) * * * (5) * * * or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and * * * the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these Rules * * * ". *Rule 60(b), Federal Rules of Civil Procedure, Title 28, U.S.C.A., "Rules 52 to End", p. 310.*

B. " * * * a party may amend his pleadings once as a matter of course at any time before a responsive pleading is served * * *. Otherwise, a party may amend his pleadings only by leave of Court * * *. And leave shall be freely given when justice so requires". *Rule 15(a) Federal Rules of Civil Procedure, Title 28, U.S.C.A., "Rules 1 to 16", p. 574.*

C. "Defective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts". *Title 28, U.S.C.A., Section 1653.*

D. "Full Faith and Credit shall be given * * * to the * * * judicial Proceedings of every * * * State". *Article IV, Section 1, U.S.C.A., "Constitution—Article 1, Sec. 10 to Article 7", p. 508.*

E. " * * * The records and judicial proceedings of any court of any such State * * * or copies thereof,

shall be proved or admitted in other courts within the United States * * * by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

"Such * * * records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States * * * as they have by law or usage in the courts of such state * * * from which they are taken". *Title 28, U.S.C.A., Section 1738.*

V.

STATEMENT OF THE CASE CONTAINING THE FACTS MATERIAL TO CONSIDERATION OF THE QUESTIONS PRESENTED

A. **Basis For Federal Jurisdiction In The Court Of First Instance.** Petitioner sought to file a motion for relief from judgment in the District Court under the provisions of Rule 60(b)(1)(6) of the *Federal Rules of Civil Procedure.* (Tr. III, 3) The respondent, Clerk of the District Court, refused to receive and file the motion and accompanying papers. (Tr. II, 5-6) Petitioner thereupon moved the Court of Appeals for leave to file petition for writ of mandamus directed to respondent (Tr. II, 1-2) as authorized by *Title 28, U.S.C.A., Section 1651.* (Tr. II, 7) Motion was denied. Petitioner is here on petition for Certiorari with three (3) questions presented (III, *supra.*).

B. **Statement Of The Facts.** On October 21, 1953, in the cause *Vaughan v. Warfield, et al (supra)*, the United States Court of Appeals for the Eighth Circuit, in sustaining an Order of the United States District

Court for the Eastern District of Arkansas dismissing the action for lack of jurisdiction, **held:** that the District Court lacked jurisdiction of the defendant Warfield and all defendants who were non-residents of Arkansas, and

> " • • • that the complaint discloses on its face that the appellant (Vaughan) did not have an action in equity when the suit was commenced. The alleged equitable basis of the suit had been adjudicated in the state court against the appellant before this suit was commenced (207 F. 2nd 351)."

On March 8, 1954, this Court denied certiorari. On March 16, the Court of Appeals issued its mandate to the District Court, where it was received and filed on March 18, 1954 (Page 2, Petitioner's Exhibit "A" to his petition for writ of mandamus—Tr. III, 2).

On September 13, 1954, petitioner mailed to the respondent, Clerk **of the District Court, a "Motion For Relief From Order, And For Leave To File Amended Complaint".** (Tr. III, 3-6) Petitioner therein moved the District Court to relieve petitioner, upon such terms as are just, from the Order of dismissal of January 5, 1953 for lack of jurisdiction, and grant petitioner leave to file an amended complaint consistent with the opinions of the District Court and Court of Appeals. Further, that petitioner be permitted to cure the jurisdictional defects of the original complaint by dismissing the action as to the defendant Carneal Warfield and the several alleged citizens of Mississippi; and that petitioner be granted leave to show that, **in fact,** the equitable basis for jurisdiction of the District Court in the *Vaughan v. Warfield, et al* (*supra*) suit **had not** been adjudicated in the State Court against the petitioner before the *Vaughan v. Warfield* suit was brought, **as was erroneously disclosed on the**

face of the original complaint. Actually, and as was shown by a certified copy of the State Court decision attached to the motion papers—the State Court decision had held that through the fault of his agents, petitioner had failed to properly exercise **an** option to purchase the "Florence" Plantation in its entirety by December 1, 1950. (Tr. III, 23) But petitioner was left, by that State Court decision, in possession of all of the lands for 1950, 1951 and 1952; and the equitable owner in possession of an undivided one-half interest in the lands, subject only to the payment of $30,000.00 to the then owner, Branson, and the assumption of a $10,000.00 mortgage, at any time before **December 31, 1952.** (Tr. III, 8)

On September 16, 1954, the respondent, Clerk of the United States District Court for the Eastern District of Arkansas, wrote the petitioner as follows:

> "This is in reply to your letter of September 13th, in which you ask leave to file a pleading in Equity 2495, Vaughan v. Warfield, et al.
>
> "This is to advise that this case was dismissed by Judge Nordbye in January of 1953 and his order of dismissal was affirmed by the Circuit Court of Appeals on October 21, 1953. Later, the Supreme Court of the United States denied certiorari. Therefore, there is no such case on the Court's Docket and your pleading is herewith returned". (Tr. II, 5-6; Tr. IV)

On October 16, 1954, petitioner filed in the Court of Appeals for the Eighth Circuit his **"Motion For Leave To File Petition For Writ Of Mandamus Directed To Respondent"**, reciting that

> "The respondent erroneously and arbitrarily refuses to receive and file a motion for relief from judgment, despite the fact that the motion is

presented for filing within a reasonable time, and in accordance with Rule 60(b)(1)(6) of the *Federal Rules of Civil Procedure.* (Tr. II, 1-2)

"No remedy by appeal is available to petitioner from the refusal of the respondent to receive and file the papers in petitioner's **'Motion For Relief From Order, And For Leave To File Amended Complaint'.** Therefore, this recourse to the extraordinary writ of Mandamus is petitioner's only remedy". (Tr. II, 2)

"This Court (of Appeals) has jurisdiction and power to grant petitioner's prayer for relief". (Tr. II, 2)

Leave was thereupon requested to file an attached printed Petition For Writ Of Mandamus. (Tr. II, 2)

Respondent, in reply to petitioner's Motion, stood upon the reason given in his letter of September 16, 1954 (*supra*) for having refused to receive and file petitioner's **Motion For Relief From Order, Etc.** (Tr. IV)

On November 13, 1954, the Circuit Court of Appeals denied petitioner's **Motion For Leave To File Petition For Writ Of Mandamus Directed To Respondent,** (Tr. V) and on December 20, 1954, denied petition for rehearing. (Tr. VIII)

VI.

ARGUMENT

A.

Whether This Cause Is Properly Before This Court By Petition For Writ Of Certiorari?

As to the question of whether this cause is properly before this Court by petition for certiorari; or whether the proceeding should be by motion to set aside the mandate of this Court denying certiorari in the cause,

Vaughan v. Warfield, et al, 347 U.S. 916, or by mandamus directed to respondent—it is believed by petitioner that certiorari is proper.

A motion to set aside the mandate of this Court denying certiorari in the *Vaughan v. Warfield* case would not grant this Court jurisdiction to review the matters presented by this *Vaughan v. Miller* case. Petitioner believes that jurisdiction to review the *Vaughan v. Miller* case could be conferred on this Court only by certiorari under *Title 28, U.S.C.A., Section 1254*, or by mandamus under *Title 28, U.S.C.A., Section 1651.*

Under *Title 28, U.S.C.A., 1651(a)*, by writ of mandamus, petitioner believes this Court could command the respondent to receive and file petitioner's Motion for relief from judgment. But suppose this were done, and the District Court granted the petitioner leave to file an amended complaint, and, based upon such amended complaint, set aside or modified its Order of January 5th, 1953. Petitioner believes the case would still have to go back to the Court of Appeals to set aside its judgment of affirmance of October 21, 1953; then back to this Court on motion to withdraw its Mandate of March 8, 1954, denying certiorari. Surely, this would be an unduly cumbersome procedure. Especially since, to prevent denial of full faith and credit to a previous valid State Court decision, on its own motion, this Court is empowered to review the entire matter of the *Vaughan v. Warfield, et al* case in the light of the *Vaughan v. Branson, et al* case brought up on certiorari by the *Vaughan v. Miller* case. This Court has power to permit petitioner to amend the defective allegations of jurisdiction in his original complaint, *Title 28, U.S.C.A., Section 1653*, for both the *Vaughan v. Warfield* and the *Vaughan v. Miller*

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cases have now been properly brought before this Court for review on certiorari.

The State Court decision is now also properly before this Court. A copy of the Opinion of the Chancellor of the Chicot County, Arkansas, Chancery Court in the cause: *Jack C. Vaughan v. Fred P. Branson, et al*, No. 7894, rendered on August 22, 1951, bearing the attestation of the Clerk and Seal of Court annexed, together with a certificate of a judge of the Court that the attestation is in proper form, as provided by *Title 28, U.S.C.A., Section 1738, p. 505*, has been filed in this Court along with the Record and petition for certiorari in this *Vaughan v. Miller* case.

If it is now found that the decision of the Court of Appeals in the *Vaughan v. Warfield, et al* (8th CCA) case, 207 F. 2nd 350, rendered on **October 21, 1953,** is in conflict with the prior valid State Court decision of the *Vaughan v. Branson, et al* (*supra*) case; it would be the duty of this Court to not only resolve the conflict; but to order such further proceedings in the District Court, or the Court of Appeals, as may be necessary or proper to assure that full faith and credit is given to the State Court proceedings and to any equitable rights that petitioner claims thereunder. This Court has said, **"The principle which governs the effect of judgments of one state in the courts of another state is equally applicable in the * * * courts of the United States** (emphasis added)". *Cooper v. Newell*, 173 U.S. 555, 568; 19 S. Ct. 506; 43 L. Ed. 808. *Goldey v. Morning News*, 156 U.S. 518, 521.

B.

Whether The Clerk Of An United States District Court May Arbitrarily Refuse To Receive And File A Motion For Relief From An Order Of Dismissal For Lack Of Jurisdiction, Where Such Motion Is Presented: (1) Within Time; (2) In Accordance With Rule 60(b)(1)(6) Of The Federal Rules Of Civil Procedure; (3) Before The Filing Of A Responsive Pleading By Any Of The Defendants; and (4) For The Purpose Of Amending And Curing Supposedly Defective Allegations Of Jurisdiction.

(1) **The Motion Was Presented Within Time.** A motion for relief from judgment may be filed within one year from date of entry of the judgment or order for reasons (1) thru (3) of Rule 60(b) of the *Federal Rules of Civil Procedure;* or **within a reasonable time** for any reason other than those prescribed in (1) thru (5) of Rule 60(b) which would justify relief from operation of the judgment or order.

Though the Order of the District Court in the *Vaughan v. Warfield* case was entered on January 5, 1953; timely appeal from the Order took the case out of the District Court's hands until receipt by the District Court of the Mandate of the Court of Appeals. The Mandate of the Court of Appeals was received and filed in the District Court on **March 18, 1954.** Less than six months later, on September 13, 1954, petitioner attempted to file his motion for relief from the Order of the District Court, thereby complying with Rule 60(b)(1).

Conflict with a prior State Court decision is believed grounds for relief from the operation of a federal judgment or order, *Cooper v. Newell* (*supra*) and *Goldey v.*

Morning News (supra); *Art. IV, Sec. 1, Constitution;* and *28 U.S.C.A., Section 1738.* Therefore, this case clearly falls within the purview of Rule 60(b)(6).

Petitioner was compelled to go back and bring up the State Court decision and let it speak for itself, if he hoped to amend the complaint to conform with the evidence. That is exactly what he sought to do under the provisions of Rule 60(b)(1)(6) of the Federal Rules of Civil Procedure. But he was blocked, at the outset, by the District Court Clerk's refusal to receive and file petitioner's relief from judgment, to which was appended the State Court decision of August 22, 1951, in the case of *Vaughan v. Branson, et al. (supra).*

Insofar as it was in the power of petitioner to do so; the Courts below were given opportunity to consider their own Orders and Opinions in the light of the prior valid State Court decision of August 22, 1951.

(2) **The Motion Was Presented In Accordance With Rule 60(b).** Rule 60(b) of the F.R.C.P. states:

> " * * * The procedure for obtaining any relief from a judgment **shall** be by motion * * * ". emphasis added).

It is respectfully submitted that, by this language, petitioner is granted an **absolute right,** if he chooses, to present to the District Court a motion, made in good faith, for relief from the judgment, or Order, of the District Court of January 5, 1953, for the word, **"shall"** is the language of command. *Escoe v. Zerbst,* 295 U.S. 490, 493; 55 S. Ct. 818; 79 L. Ed 1566.

Nor has the petitioner's **absolute right** been qualified by Congress, in any respect, to permit the arbitrary discretion of a Clerk of a District Court to interfere with a litigant's right to present his motion for relief from

judgment to the District Court for its consideration. In condoning the action of the Clerk of the District Court by refusing to compel the performance of an official ministrative act, the Court of Appeals has wrongfully permitted the Clerk to ignore at will, and with impunity, Federal Statute enacted by Congress as expressed by Rule 60(b). Petitioner believes that here is an assault by another Branch of Federal Government on the Constitutional powers of Congress in the most vicious and malignant form possible. The act is not committed in a forthright manner by any Court after deliberation; but by a **Clerk** of a District Court!

Petitioner believes it would, indeed, be a drab display of federal judicial integrity if this Supreme Court of the United States permits the act, or the **condonation** of the act, to stand.

(3) **The Motion Was Presented Before The Filing Of A Responsive Pleading By Any Of The Defendants.** As shown by the Opinion of the Court of Appeals in the *Vaughan v. Warfield, et al* (*supra*) case; no responsive pleading had been filed by any of the defendants. Only a motion to dismiss for lack of jurisdiction had been filed by the only defendant served, Carneal Warfield; and a motion to dismiss is not a responsive pleading *Ohio Casualty Co., Inc. v. Farmers Bank of Clay, Kentucky*, 178 F. 2nd 570, 573.

Rule 15(a) of the *Federal Rules of Civil Procedure* states that

> "A party may amend his pleadings once as a matter of course at any time before a responsive pleading is served * * *. Otherwise, a party may amend his pleading only by leave of Court * * * and leave shall be freely given when justice so requires".

However,

> "The right granted by Rule 15(a) to amend the complaint once as a matter of course **ends with the entry of a judgment dismissing the action. Thereafter, the complaint could be amended only with leave of the Court, or by application addressed to the Court's discretion under Rule 60(b) to have the judgment set aside in order to permit the filing of an amended complaint".** (emphasis added)
>
> *Feddersen Motors, Inc. v. Ward* (10th CCA), 180 F. 2nd 519, 523.

(4) **The Motion Was Presented For The Purpose Of Amending And Curing Supposedly Defective Allegations Of Jurisdiction.** The language of the motion for relief from the Order of January 5, 1953, which was addressed to the District Court on September 13, 1954, prayed:

a. That petitioner "be permitted to cure the jurisdictional defects (of the original complaint) by dismissing the action as to the defendant Carneal Warfield and the several alleged citizens of Mississippi". (Tr. III, 4)

b. That petitioner be given "leave to show that, in fact, the equitable basis of this suit **had not** been adjudicated in the State Court against the (petitioner) before this suit was commenced as was erroneously disclosed on the face of the original complaint. (Petitioner showed) that the State Court decision left the (petitioner) the equitable owner of a one-half interest in the "Florence" Plantation * * * ". (Tr. III, 4-5)

c. That also, as far as petitioner knew, no intervening rights have attached in reliance upon the said Order of the District Court of January 5, 1953; and no actual injustice would result from the District Court's granting of petitioner's re-

quest to file an amended complaint * * * ", (Tr. III, 5)

In addition to Rule 15, F.R.C.P. (*supra*), wherein the District Court has the discretion to grant petitioner the right to amend his complaint **after** the granting of relief from judgment or order under the provisions of Rule 60(b); it is submitted that this Supreme Court has power to permit petitioner to amend the defective allegations of jurisdiction, upon terms, contained in the face of the complaint, *Title 28, U.S.C.A., Section 1653;* by:

(a) Omitting parties (all but defendant C. A. Mewis, and other persons holding title to interests in the lands);

(b) Omitting reference to having "lost" Florence Plantation as the result of the State Court decision—when, actually, the Plantation was "lost" by the alleged frauds of the present title-holder, defendant C. A. Mewis, in conjunction with the acts of the other defendants, who allegedly took advantage of a fiduciary relationship to strip petitioner of his equitable interests in the lands, which had been **vested in him by the State Court decision.**

C.

Whether This Court May Correct Errors Manifest In A Decision Rendered By A Court Of Appeals Which Conflicts With And Denies Petitioner Equitable Interests In Lands, which Equitable Interests Have Been Vested In Petitioner By A Previous Valid State Court Judgment.

As shown hereinbefore, this Court has power to permit petitioner to amend the defective allegations of jurisdiction, upon terms, contained in the face of the complaint by virtue of the provisions of *Title 28, U.S.*

C.A., Section 1653 ((3), above). A recital of the pertinent portions of the entire matter, it is believed, clearly shows that petitioner not only **does have** equitable interests in the "Florence" Plantation; but is entitled to trial on the merits of those claims. Further, that the District Court should be compelled to invoke its equity jurisdiction for the protection of petitioner's claims to the lands, and ancillary rights arising out of or by virtue of those claims:

The Vaughan-Branson Contract of March 28, 1950, stated:

"It is agreed between (Branson) and (Vaughan) that this contract shall remain in effect for one year, if and in the event (Vaughan) exercises the option contained in the last paragraph above, **but if he does not exercise the said option as of December 1, 1950, then this contract of lease and option to buy one-half interest in the farm as hereinabove set out shall be for the years 1950, 1951, and 1952, expiring December 31, 1952".** (emphasis added) (Tr. III, 8)

The State Court in the *Vaughan v. Branson* suit stated:

" * * * the main question is specific performance based upon compliance with a proper exercise of the option (that) * * * if (Vaughan) elected to purchase, he had; 'the right to purchase the entire farm and receive a warranty deed therefor by paying (Branson) the crop rent for 1950 and $28,000.00 and (Vaughan) assuming the remainder ($24,000.00) due Connecticut General Life Insurance Company'. This was to be done 'on or before December 1, 1950' ". (Tr. III, 10)

" * * * Plaintiff Vaughan filed his complaint alleging that he had complied with the terms of the option and was entitled to a deed to the property; but defendant (Branson) had wrongfully refused to convey, and he, (Vaughan) asked for specific performance". (p. 9, Ibid.).

" * * * Defendant (Branson) * * * only asks for the complaint to be dismissed for want of equity". (p. 20, Ibid.).

" * * * Mr. Hollowell of the First National Bank of Greenville, Mississippi, wrote defendant (Branson) a letter informing him that there was (is) in the bank sufficient money to take up a draft for the estimated amount of rent and $28,000.00 ($29,457.45); and, with the letter, he enclosed a blank draft and an unexecuted deed and informed defendant (Branson) if he would execute the deed and sign the draft, that is, if he would draft on plaintiff through his bank, with the executed deed attached, when the draft and deed were received the draft would be paid". (p. 15, Ibid.).

" * * * The Greenville (First National Bank of Greenville, Mississippi) bank could have wired the money to its corresponding bank in Muskogee (Okla.) and had that bank to offer the money to defendant (Branson) and asked for a deed, or it could have put the amount in the Muskogee bank to be delivered to defendant upon delivery of a deed in accordance with the contract" * * * If the bank "had transmitted the amount called for in the option to defendant (Branson) in Muskogee in any manner recognized in business or banking methods as payment, almost any court would hold this to have been payment". (p. 17, Ibid.) "The wording of the contract negatives the method pursued to pay the amount called for in the option * * * " (p. 17, Ibid.).

" * * * so the court * * * rests a finding for the defendant (Branson) **on the question of specific performance** (emphasis added) on the failure of the plaintiff to exercise the option in keeping with the terms of the option as stated in the contract." (p. 23, Ibid.).

As shown by the foregoing, the State Court only held that the petitioner (plaintiff in that suit) has failed to exercise **an** option to purchase the property **in its entirety** by December 1, 1950. But the petitioner was left, by that State Chancery Court decision, **in possession of all of the lands for 1950, 1951 and 1952; and the equitable owner of an undivided one-half interest in the lands—subject only to the payment of $30,000.00 [redacted] as rent or otherwise to Branson and assumption of a $10,000.00 mortgage by December 31, 1952.**

And what happened to those equitable interests?

As alleged in the original complaint in the *Vaughan v. Warfield, et al* case (*supra*); by the betrayal of fiduciary relationships, the defendants defrauded the petitioner of his interests in the lands as follows:

" * * * On September 18, 1950, on the advice and urging of the defendant, the First National Bank of Greenville, the plaintiff, Vaughan, agreed to sell his interest in the "Florence" Plantation for $75,000.00—retaining certain oil mineral rights (R. 4—Vaughan v. Warfield).

" * * * On November 3, 1950, the plaintiff, Vaughan, at the urging of his agents * * * retained as counsel the defendant, Carneal Warfield * * * " (R. 5, Ibid.).

"Unknown to * * * Vaughan, the defendant Carneal Warfield was either already retained by the defendant C. A. Mewis, or was subsequent thereto retained by the

said defendant C. A. Mewis for the purpose of getting possession and control of the said "Florence" Plantation for the defendant, C. A. Mewis (R. 6, Ibid.).

"On the advice and urging of the said defendants, his agents, * * * Vaughan allowed B. H. Kraemer to be placed in possession of the said "Florence" Plantation with the understanding that * * * the interests of * * * Vaughan would be carefully looked after. The said B. H. Kraemer later revealed himself to be a partner of defendant Mewis in the cattle business, and Mewis, through Kraemer, obtained possession of the said "Florence" Plantation (R. 6, Ibid.).

"On * * * December 18, 1950 * * * (defendant) C. A. Mewis, without the knowledge or consent of plaintiff * * * (leased) * * * to the defendants, Keith Brothers, all of the best cultivatable lands of the said "Florence" Plantation **for the next two succeeding years. This, coincidently, was for the same term of years as plaintiff Vaughan's lease under the Branson-Vaughan contract of March 28, 1950 in the event Vaughan did not exercise his option of December 1, 1950. By this action * * * Vaughan was thus completely frozen out of possession of "Florence" Plantation** (emphasis added) (R. 7, Ibid.).

"Trial on the merits of the case, *Vaughan v. Branson,* was held in the Chicot County, Arkansas, Chancery Court on April 12, 1951. The said Court held that due to the negligence of defendant Warfield, who had drawn up a faulty deed to be mailed to Branson; and, in effect, due to the negligence of the defendant, The First National Bank of Greenville, Mississippi, in the unbusinesslike manner in which it had attempted to transmit the tender of funds through banking channels, the said plain-

tiff, Jack C. Vaughan, had failed to make a proper tender as provided by the Branson-Vaughan contract (R. 8, Ibid.).

"By reason of the foregoing acts of collusion and fraud on the part of his agents and his attorney, the plaintiff, Jack C. Vaughan, lost the "Florence" Plantation. The defendant, C. A. Mewis, prevailed, and * * * Vaughan received not one cent of the * * * Seventy-Five Thousand Dollars which was used by the defendants C. A. Mewis, J. W. King, and the First National Bank of Greenville, to lure the said Vaughan off those lands (R. 8, Ibid.).

"Wherefore, Plaintiff prays for the following relief:

A-1

"That any and all instruments of conveyance of the aforesaid "Florence" Plantation, in whole or in part, and any leases, or easements, or grants of rights-of-way, or otherwise, wherein the said Fred P. Branson appears as a grantor, or C. A. Mewis is a grantee, or where the said defendant Mewis is a grantor, be cancelled, set aside, and held for naught by this Honorable Court.

A-2

"That title, in fee, to the said "Florence" Plantation be granted by this Honorable Court to, and be henceforth vested in, the plaintiff, Jack C. Vaughan. Subject to whatever balance of the $24,000.00 first mortgage held by the Connecticut General Life Insurance Company of March 28, 1950 remaining outstanding. Any payments made thereon, or to the said Fred P. Branson, by the said defendant, C. A. Mewis, to be considered as rental paid by the said C. A. Mewis to the said plaintiff, Jack

C. Vaughan, for the period he has retained possession of the said "Florence" Plantation, and which original possession was obtained through fraud." (R. 8-9, Ibid.).

But despite the foregoing, the United States Court of Appeals for the Eighth Circuit, in the *Vaughan v. Warfield, et al* case HELD:

" * * * the complaint discloses on its face that the appellant (Vaughan) did not have an action in equity when the suit was commenced. The alleged equitable basis of the suit had been adjudicated in the state court against the appellant before this suit was commenced (*Vaughan v. Warfield, et al*, 207 F. 2nd 351)".

If the complaint discloses such a thing on its face, the complaint was erroneously drawn; and petitioner should be allowed to amend it. For leave to amend a complaint " * * * shall be freely given when justice so requires" (Rule 15(a), *Federal Rules of Civil Procedure*). It is clear, from the evidence now before this Court, that the State Court decision **did not** adjudicate petitioner to be without equitable claim to "Florence" Plantation. On the contrary, all of petitioner's rights in and to the property (granted by the Branson-Vaughan contract) remained vested in petitioner **except the right to a warranty deed to the property in its entirety**—which petitioner would have been entitled to if the option of December 1, 1950, had been properly exercised.

If, as alleged in petitioner's complaint, the defendant, C. A. Mewis, in league with the other defendants, betrayed a trust and defrauded petitioner Vaughan of possession of the lands for the years 1951 and 1952 and also defrauded Vaughan of his at least one-half interest in the Plantation—any title or advantage obtained by the said Mewis, or anyone else holding under him, as the

result of the alleged frauds, should be cancelled and set aside and the title vested in petitioner. *Angle v. Chicago, St. P. M & O R. Co.*, 151 U.S. 1, 26-27; 14 S. Ct. 240; 38 L. Ed. 55. Such an action for the recovery of his equitable interests by petitioner is clearly one calling for exercise, on the part of the District Court, of its equity jurisdiction. For the cancellation of deeds to property, which have been obtained through fraud, is within the sole, and historical, province of Equity.

In any event, petitioner is entitled to right of trial on the merits. If petitioner is denied the right to amend his complaint in the *Vaughan v. Warfield, et al,* case: he would then be forced to bring a new action. And any new action might conceivably be cut off by Statutes of Limitations, with the result that defendants would be allowed to profit by their alleged frauds without being called upon to go to trial.

The decision of the Court of Appeals in both the *Vaughan v. Warfield, et al,* and the case at bar, *Vaughan v. Miller,* should be set aside to permit the petitioner to file an amended complaint and obtain a trial upon the merits in the United States District Court for the Eastern District of Arkansas, in cause No. 2495 of the Equity Docket, thereof, to-wit:

Jack C. Vaughan v. Carneal Warfield, et al.

CONCLUSION

For the foregoing reasons, petitioner, Jack C. Vaughan, prays the Honorable Court to grant this petition for writ of certiorari to be directed to the United States Court of Appeals for the Eighth Circuit, and upon the merits:

1. Withdraw its Mandate denying certiorari in the cause: *Vaughan v. Warfield, et al.*, No. 499, October Term, 1953, 347 U.S. 916, 74 S. Ct. 514, 98 L. Ed. 392.

2. Reverse the decision of the United States Court of Appeals for the Eighth Circuit of October 21, 1953 in the *Vaughan v. Warfield, et al* case, 207 F. 2nd 350.

3. Command the United States Court of Appeals for the Eighth Circuit to withdraw its Mandate of March 16, 1954 sustaining the Order of the United States District Court for the Eastern District of Arkansas rendered on January 5, 1953.

4. Remand said cause, *Vaughan v. Warfield, et al* to the District Court for further proceedings.

5. Command the respondent, Grady Miller, Clerk of the United States District Court for the Eastern District of Arkansas to restore Cause No. Equity-2495, *Vaughan v. Warfield, et al*, to the Docket of said Court, and receive and file an amended complaint, and any other pertinent papers tendered for filing in the said cause by plaintiff, petitioner here.

6. Grant petitioner his costs, and such other relief as is by this Court deemed necessary.

Respectfully submitted,

JACK C. VAUGHAN,
Petitioner, in propria persona

Mailing Address:
Post Office Box 1005,
Gardena, California.

CERTIFICATE

Petitioner certifies that a true copy of the foregoing petition for writ of certiorari was mailed, postage prepaid, First Class Mail, Airmail, to the respondent at his last known address, to-wit: Hon. Grady Miller, Clerk, United States District Court for the Eastern District of Arkansas, Post Office Building, Little Rock, Arkansas; and that a true copy of the foregoing petition for writ of certiorari was mailed, postage prepaid, First Class Mail, Airmail, to counsel for Carneal Warfield at counsel's last known address, to-wit: Mr. Ohmer C. Burnside, Lake Village, Arkansas; and that the foregoing were enclosed in envelopes duly addressed to Messrs. Miller and Burnside as recited above, and were deposited by the undersigned in the United States Mails at the United States Post Office at Gardena, California, on the 5 day of March, 1955.

s/ JACK C. VAUGHAN

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.

Deponent, Jack C. Vaughan, the Petitioner in the foregoing cause, states on oath that the statements made in the foregoing Certificate of service are true.

s/ Jack C. Vaughan
Jack C. Vaughan

Jack C. Vaughan,
Petitioner.

SWORN TO AND SUBSCRIBED before me, this 5 day of March, 1955.

s/ R. D. Albright
Notary Public

My Commission Expires: 11-24-1956

(SEAL)

APPENDIX.

(Order denying Motion of Petitioner for Leave to file Petition for Writ of Mandamus.)

No. 15218.

United States Court of Appeals for the Eighth Circuit

September Term, 1954.

Saturday, November 13, 1954.

JACK C. VAUGHAN,
Petitioner,
vs.
GRADY MILLER, Clerk, United States District Court for the Eastern District of Arkansas.

MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF MANDAMUS

The petitioner in this matter filed a motion for leave to file a petition for writ of mandamus to be directed to the respondent, Grady Miller, Clerk, United States District Court for the Eastern District of Arkansas, commanding him to restore the cause of Vaughan vs. Warfield, *et al.,* Civil cause No. 2495, to the docket of said District Court and to receive and file petitioner's motion for relief from order of dismissal for lack of jurisdiction, entered January 5, 1953, and for leave to file amended complaint. This Court, having considered the motion and letter of the Clerk of the District Court concerning the matter, It is now here Ordered that the motion for leave to file petition for writ of mandamus be and is hereby denied.

November 13, 1954.

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